

## REMARKS

Applicants' representative thanks Examiner Felton and SPE Griffin for participating in the telephone interview held April 13, 2007. The March 19, 2007 Office Action was discussed, and based on that discussion, Applicants submit the following remarks.

The claims are rejected based on the existence of co-pending patent application serial number 10/675,584 ("the '584 application) which is assigned to the same assignee as the present application, but includes no common inventors with the present application. Applicants respectfully traverse the rejections of Claims 13 and 33 under 35 U.S.C. § 102(f) and for obviousness-type double patenting.

There are numerous independent basis for withdrawing the rejections of Claims 13 and 33. First, the '584 application was filed after the present application, and thus does not qualify as prior art as against the present application. Second, Applicants' filed, and the Office accepted, a declaration that the inventors named in the present application are the true inventors of the invention as claimed. Applicants hereby reaffirm their declaration, which is presumed to be correct under the Rules.

Third, the rejection of the claims in the present application, which is based on the assertion that Claims 1, 15, 18, 23 and 24 of the '584 application claim the same invention as the present application, disregards differences between the claims in the two applications. Claims 15, 18, 23 and 24 of the '584 application all depend from Claim 1. Claim 1 recites a cigarette having a filter element and a tobacco rod comprising, *inter alia*, a first longitudinally extending section of filter material containing a breakable capsule, and an "adsorbent material" positioned between the first section of filter material and the tobacco rod. Neither Claim 13 nor Claim 33 of the present

application recite an "adsorbent material" positioned between a filter element containing a breakable capsule and a tobacco rod. Thus, the same invention is not being claimed in the two applications. Moreover, to the extent a hypothetical prior art rejection could be made, the differences between the claimed and disclosed subject matter would require that the rejection be made for obviousness under 35 U.S.C. 103. Applicants maintain that no such rejection can be made, but even if it could, 35 U.S.C. 103(c)(1) precludes any obviousness rejection because both applications are assigned to the same assignee.

With regard to the provisional rejection of Claims 13 and 33 based on obviousness-type double patenting, the subject claims are not obvious over Claims 1, 15, 18, 23 and 24 of the '584 application for the reasons stated above.

In view of the foregoing remarks, Applicants respectfully submit that the claims of the present invention define subject matter patentable over the reference cited by the Office and that the application is in condition for allowance. Should the Office believe that anything further is desirable to place the application in better condition for allowance, the Office is invited to contact Applicants' undersigned attorney at the below listed telephone number.

The Director is hereby authorized to charge any deficiency or credit any overpayment to deposit account number 03-2469. Moreover, if the deposit account contains insufficient funds, the Director is hereby invited to contact Applicants' undersigned representative to arrange payment.

Respectfully submitted,



Date: May 30, 2007

DAVID R. YOHANNAN, Reg. No. 37,480  
KELLEY DRYE & WARREN, LLP  
3050 K Street, N.W., Suite 400  
Washington, D.C. 20007  
(202) 342-8400